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In re Application of
Stitou et al.
Application No. 10/549,326
PCT No.: PCT/FR04/00617
Int. Filing Date: 12 March 2004
Priority Date: 18 March 2003
Atty. Docket No.: 032013-129
For: Method And Device For Rapid
And High-Power Cold Production

COMMUNICATION

This is in response to the renewed submission under 37 CFR 1.42 filed on 27 September 2006.

DISCUSSION

In a Communication mailed on 14 August 2006, the declaration of the inventors filed on 03 February 2005 was not accepted under 37 CFR 1.42, without prejudice, because

Further examination of the declaration filed on 03 February 2006 reveals that it provides citizenship, residence and mailing address information for each of the five individuals signing on behalf of Bernard Spinner, but it does not provide "the facts which the inventor would have been required to state" in that Bernard Spinner's citizenship, residence and mailing address information is not listed.

In addition, Bruno Spinner, Caroline Spinner Brossard, Anne Christel Spinner Kohler and Martin Spinner have signed in the capacity of "heir and legal representative to Bernard Spinner," while Nathalie Mazet has signed as "mother of minor Camille Spinner, daughter of and heir and legal representative to Bernard Spinner." There is no affirmative statement that the five signatories (or some other set of individuals) constitute "all" of the heirs and legal representatives of Bernard Spinner. This issue is exacerbated by the fact that applicants have not adequately clarified the status of Nathalie Mazet. Counsel states that "Camille Spinner is a minor, and her mother, Nathalie Mazet, has signed on her behalf." It is not clear whether Ms. Mazet is also an heir, and in what capacity she has signed the declaration (is she representing her own interests as an heir, or only Camille Spinner's interests as an heir, when she signs on behalf of Bernard Spinner? Are both Nathalie Mazet and Camille Spinner "legal representatives" of Bernard Spinner?) The language "mother of minor Camille Spinner, daughter of and heir and legal representative to Bernard Spinner" is particularly unclear; should this be interpreted as "signing on behalf of minor heir Camille Spinner as Camille Spinner's mother, Camille Spinner being a daughter of Bernard Spinner, an heir of Bernard Spinner, and a legal representative of Bernard Spinner, and Nathalie Mazet (also being/not being) an heir and a legal representative of Bernard Spinner"? It is noted that the mere fact that a particular heir may be a minor does not preclude that heir from signing a declaration of inventorship, so long as he or she understands the declaration. As such, if Camille Spinner understands the declaration, it would be appropriate for her to execute it herself. For these reasons, it would not be appropriate to accept the declaration of the inventors under 37 CFR 1.42 at this time.

In response, counsel has submitted three new declaration documents, each of which lists the residence, citizenship and postal address of deceased joint inventor Bernard Spinner. However, one declaration lists (only) Caroline Spinner Broussard and Anne Christel Spinner Kohler as heirs, while the others list Bruno Spinner, Caroline Broussard and Christel Kohler, and also list Nathalie Mazet as signing "on behalf of Bernard Spinner's 2 minor children" without naming said children as heirs. These declarations are defective in that none of them lists the entire set of "all" of Mr. Spinner's heirs. As noted in the Communication mailed on 14 August 2006, a proper declaration submitted under 37 CFR 1.42 is required (per 37 CFR 1.497(b)(2)) to list all of the heirs/legal representatives as well as their citizenships, postal addresses and residences. With respect to the issue of Nathalie Mazet signing on behalf of the minor children, the fact that certain heirs may be minors does not relieve applicants of the requirement to list all of the heirs on the declaration, along with the pertinent information. It is also noted that said heirs may sign the declaration document, even if they are minors, so long as they understand its contents. In the event that counsel instead opts to submit a further declaration signed on their behalf by Nathalie Mazet, such a declaration must clearly identify on its face the capacity in which she is signing. In other words, it must specify the source of her authority to sign on behalf of the heirs (e.g., as "legal guardian" or "legal representative" of such heirs). In view of the defects noted, it would not be appropriate to accept the proffered declarations at this time.

CONCLUSION

The declaration is NOT ACCEPTED under 37 CFR 1.42, without prejudice.

If reconsideration on the merits of this matter is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Submission Under 37 CFR 1.42." Extensions of time may be obtained under 37 CFR 1.136(a). Failure to timely file a proper response will result in ABANDONMENT.

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Mail Stop PCT, P.O. Box 1450, Alexandria, VA 22313-1450, and address the contents of the letter to the attention of the Office of PCT Legal Administration.



George M. Dombroske
PCT Legal Examiner
Office of PCT Legal Administration
Tel: (571) 272-3283
Fax: (571) 273-0459